STATE OF MICHIGAN

COURT OF APPEALS

IRON MOUNTAIN INFORMATION MANAGEMENT, INC.,

Plaintiff-Appellee,

v

CITY OF LIVONIA,

Defendant,

and

STATE TAX COMMISSION,

Defendant-Appellant.

UNPUBLISHED
August 19, 2014

No. 312753
Wayne Circuit Court
LC No. 11-015758-AA

Before: GLEICHER, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Iron Mountain Information Management, Inc. (Iron Mountain) and the city of Livonia could not agree on how to classify certain of Iron Mountain's real and personal property for taxation purposes. Iron Mountain challenged the City's "commercial" classification to the State Tax Commission (STC), seeking reclassification as "industrial" property. The STC upheld the City's decision. Iron Mountain appealed that ruling to the Wayne Circuit Court, which determined that the STC's decision was "not supported by competent, material, substantive evidence on the record" and ordered the property to be reclassified as industrial.

The circuit court applied an incorrect standard of review. Where an appeal does not involve a contested case under the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, the circuit court's review is limited by Const 1963, art 6, § 28, to determining whether the

agency's decision was "authorized by law." We vacate the circuit court's order and remand for reconsideration under the proper standard of review.[1]

I. BACKGROUND

Pursuant to the general property tax act (GPTA), all real and personal property in the state of Michigan that is "not expressly exempted, shall be subject to taxation." MCL 211.1. MCL 211.34c governs the classification of property assessed under the GPTA. Pursuant to MCL 211.34c(1), a city's tax assessor is responsible for classifying all assessable property within the jurisdiction by March 1 of every year. These classifications are then submitted to the county equalization department and the STC. *Id.* The Legislature defined the property assessment classifications in MCL 211.34c(2). Relevant to this appeal, this subsection provides:

> (b) Commercial real property includes the following:
>
> (*i*) Platted or unplatted parcels used for commercial purposes, whether wholesale, retail, or service, with or without buildings.
>
> * * *
>
> (d) Industrial real property includes the following:
>
> (*i*) Platted or unplatted parcels used for manufacturing and processing purposes, with or without buildings.
>
> (*ii*) Parcels used for utilities sites for generating plants, pumping stations, switches, substations, compressing stations, warehouses, rights-of-way, flowage land, and storage areas.

MCL 211.34c(3) similarly defines assessable personal property:

> (b) Commercial personal property includes the following:
>
> (*i*) All equipment, furniture, and fixtures on commercial parcels, and inventories not exempt by law.
>
> * * *
>
> (c) Industrial personal property includes the following:
>
> (*i*) All machinery and equipment, furniture and fixtures, and dies on industrial parcels, and inventories not exempt by law.

[1] The circuit court judge who originally heard this matter has since retired. On remand, the Wayne Circuit Court will be required to reassign the case.

MCL 211.34c(5) continues that "[i]f the total usage of a parcel includes more than 1 classification, the assessor shall determine the classification that most significantly influences the total valuation of the parcel."

This case involves the classification of real and personal property owned by Iron Mountain in Livonia. According to their website, Iron Mountain is a multinational "storage and information management company, assisting more than 156,000 organizations . . . with storing, protecting and managing their information." *We're Iron Mountain*, <http://www.ironmountain.com/Company/About-Us.aspx> (accessed August 4, 2014). Iron Mountain not only acts as an outside warehouse for its costumers; it also converts documents into electronic form and creates databases on CDs and hard drives to condense physical storage space.

Iron Mountain owns parcels of real property in the city of Livonia, among its various other Michigan holdings. It appears that Iron Mountain's Livonia properties had historically been classified as industrial property. In 2008, however, the STC directed a review of all industrial-classified properties for error correction purposes. Several municipalities, including Livonia, reclassified various industrial properties as commercial. This included two of Iron Mountain's parcels of real property in Livonia, along with certain personal property located thereon. This negatively impacted Iron Mountain because commercial property enjoys fewer tax exemptions.

Iron Mountain challenged the reclassification of its properties by several municipalities to the STC, which upheld those decisions. In relation to the current case, Iron Mountain fought the 2008 Livonia reclassification in the Wayne Circuit Court, successfully seeking a writ of mandamus to require the STC to order the classification of the properties as industrial. The STC appealed to this Court, arguing that the circuit court lacked subject matter jurisdiction to review its classification decision because MCL 211.34c(6) provides, "An appeal may not be taken from the decision of the [STC] regarding classification complaint petitions and the [STC's] determination is final and binding for the year of the petition." This Court reversed the circuit court's decision based on the plain language of the statute. *Iron Mountain Info Mgt, Inc v State Tax Comm*, 286 Mich App 616; 780 NW2d 923 (2009). The Supreme Court reversed this Court's opinion, holding that the statute violated the Const 1963, art 6, § 28 guarantee of circuit court review for "judicial or quasi-judicial" final decisions of administrative officers or agencies. *Midland Cogeneration Venture Ltd Partnership v Naftaly*, 489 Mich 83; 780 NW2d 923 (2009). The Supreme Court did not define the scope of judicial review of such decisions. The net result was that the circuit court's order for the property to be classified as industrial was reinstated without more specific analysis.

The STC thereafter issued orders to the city of Livonia to classify Iron Mountain's property to industrial for tax years 2008 and 2009. Iron Mountain again sought review when the City returned the property to a commercial classification in 2010. The STC upheld the reclassification and Iron Mountain filed a circuit court appeal. The parties entered a stipulated order reclassifying the property as industrial before any court decision could enter.

In 2011, the city of Livonia once again classified the subject property as commercial. On June 30, 2011, Iron Mountain challenged the classification in the STC. Iron Mountain filed a

standardized form entitled "Taxpayer Petition for Change of Property Classification" with the STC for this purpose. Bold letters in the document's introductory section advised the filer that "[t]he information filed in and with this petition will be the only information to be considered by the STC" and that the taxpayer would not be permitted "to present their appeal in person." In the petitions seeking reclassification of the real property, Iron Mountain explained, "The real property parcel is used of [sic] manufacturing and processing purposes, and/or warehousing, and, therefore, must be classified as 'industrial real property.'" Iron Mountain argued that its personal property should then be reclassified consistent with any correction to the real property. With its petitions, it appears that Iron Mountain presented only a copy of the *Midland Cogeneration* opinion and its March 2011 petitions to the Livonia board of review, indicating its protests were raised because the subject property "is used for the processing of documents and therefore should be classified as industrial."

The City, on the other hand, included the documentation supporting its assessment decision with its response in the STC. The documentation included a 2010 personal property statement filed by Iron Mountain that described its business as "Storage of Business Records." Iron Mountain had left that space blank in its 2011 forms. The City argued that such storage was a commercial, not industrial, activity.

At its December 6, 2011 meeting, the STC considered staff-prepared recommendations regarding "roughly" 379 property-classification appeals.[2] The transcript of that meeting reflects that the STC approved all staff recommendations with the exception of two not related to Iron Mountain that were stayed for further consideration. The support for this decision was succinctly stated in letters to Iron Mountain: "No manufacturing or processing use of property; document storage."

On December 22, 2011, Iron Mountain filed an appeal in the Wayne Circuit Court. Although Iron Mountain's claim of appeal included a blanket statement about procedural irregularities and the deprivation of constitutional rights in the STC, Iron Mountain's sole contention fleshed out in its accompanying brief was that the STC's classification of its Livonia properties was factually inaccurate. The property is zoned "industrial" by the city, Iron Mountain noted, and

> includes an approximately 127,650 [square foot] industrial main building, and industrial machinery and equipment, furniture and fixtures, which are used for manufacturing, processing and warehousing with supporting facilities. Among other things, at the Subject Facility, [Iron Mountain]: (1) bar codes and scans documents for sortation and storage, (2) shreds and destroys documents, (3) image-processes documents into an electronic form, (4) performs data backup and recovery work, and (5) sorts and warehouses documents.

[2] The recommendations related to the subject properties are not part of the appellate or circuit court record.

These activities fell within the statutory definition of industrial property, MCL 211.34c(2)(d), because the properties were "used for manufacturing and processing purposes" and for "warehouses."

The STC responded that Iron Mountain's corporate identity was better described as a commercial service provider, rather than as an industrial manufacturer. The service provided was offsite storage of business records for clients, a growing industry in a technological world that demands record retention for regulatory and legal purposes. As part of its record-keeping services, the STC continued, Iron Mountain engages in record retrieval for clients, as well as record disposal. Any processing or manufacturing conducted at the Livonia properties was merely "incidental" and property is classified based on its predominant use. The STC asserted that Iron Mountain failed to provide any information with its STC petition from which the agency could make any other factual determination. The STC also contended that neither it nor the circuit court were bound by *Midland Cogeneration* to classify the subject property as industrial because the Supreme Court rendered no opinion on the substance of the underlying classification decisions. Finally, the STC argued that Iron Mountain's appeal was from an uncontested case and any factual review by the circuit court was therefore prohibited by Const 1963, art 6, § 28.[3]

Following a hearing on May 22, 2012, the circuit court ruled:

> The standard of review has been briefly mentioned. The Court believes the standard of review for this Court is found in MCL 24.306 where several conditions are listed.
>
> The Court finds based on a review of the material that have been submitted that the decision is not, is not supported by competent, material, substantive evidence on the record, therefore, the decision of Michigan State Tax Commission is reversed. The property should have been classified as commercial.

The STC thereafter filed an application for leave to appeal in this Court, which was granted. *Iron Mountain Info Mgt, Inc v Livonia*, unpublished order of the Court of Appeals, entered April 19, 2003 (Docket No. 312753).

[3] Iron Mountain argues in its appellate brief that the STC and the city of Livonia urged a different standard of review in the circuit court, i.e. that the STC's decision must be "facially supported . . . at least by some facts." Iron Mountain takes this statement out of context. The court queried whether the STC claimed that the agency could make any decision regardless of the underlying evidence. The STC responded that its decision, not the circuit court's decision, had to be supported by the record evidence.

II. PROPER STANDARD OF REVIEW

Based on *Midland Cogeneration*, we know that Iron Mountain was within its rights to appeal the STC resolution of the classification dispute to the Wayne Circuit Court. At issue is the proper standard of review to be employed by the circuit court when considering the STC's classification decision. "Whether a circuit court applied the appropriate standard of review is a question of law that this Court reviews de novo." *Natural Resources Defense Council v Dep't of Environmental Quality*, 300 Mich App 79, 87; 832 NW2d 288 (2013). Interpretation of the statutes and constitutional provisions controlling the proper standard of review is also a legal question that we review de novo. *Makowski v Governor*, 495 Mich 465, 470; ___ NW2d ___ (2014).

MCL 211.34c(6) provides the method by which a property owner may appeal a classification decision:

> An owner of any assessable property who disputes the classification of that parcel shall notify the assessor and may protest the assigned classification to the March board of review. An owner or assessor may appeal the decision of the March board of review by filing a petition with the [STC] not later than June 30 in that tax year. The [STC] shall arbitrate the petition based on the written petition and the written recommendations of the assessor and the [STC] staff. An appeal may not be taken from the decision of the [STC] regarding classification complaint petitions and the [STC's] determination is final and binding for the year of the petition.

Under this statute, a dissatisfied property owner must first raise its challenge with the board of review of its taxing municipality. If that protest does not resolve in the property owner's favor, then it may file a petition with the STC. Although the language of subsection (6) still denies a property owner circuit court review of an unfavorable STC decision, that language was of course rendered unconstitutional and effectively severed from the statute by *Midland Cogeneration*.

Iron Mountain followed this procedure. It first challenged the commercial classification at the city of Livonia's March board of review. When that protest failed, Iron Mountain filed a petition with the STC, which also rejected its claims. Iron Mountain then sought appellate review in the circuit court.

On appeal from the STC, the Wayne Circuit Court employed the standard of review outlined in MCL 24.306(1) of the APA, which provides:

> Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
>
> (a) In violation of the constitution or a statute.
>
> (b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

This was not the correct standard. The APA's procedures apply only in a "contested case." MCL 24.271. A "contested case" is "a proceeding . . . in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an *evidentiary hearing*." MCL 24.203(3) (emphasis added). See *In re Parole of Elias*, 294 Mich App 507, 537 n 24; 811 NW2d 541 (2011). This distinction is based in our Constitution:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. . . . [Const 1963, art 6, § 28.]

As recently determined by this Court, STC review of an assessor's classification is not a "contested case." *CVS Caremark v Michigan State Tax Comm*, ___ Mich App ___; ___ NW2d ___ (Docket No. 312119, issued July 1, 2014), slip op at 2. *CVS* held that "the review procedure in MCL 211.34c(6) does not qualify as a hearing in the constitutional sense." *Id.* Considering the meaning of Const 1963, art 6, § 28 at the time of its drafting, *CVS* defined a hearing as including: "'a trial in equity practice'; 'a listening to arguments or proofs and arguments in interlocutory proceedings'; 'a trial before an administrative tribunal'; and 'a session (as of a congressional committee) in which witnesses are heard and testimony is taken.'" *CVS*, slip op at 2, quoting *Webster's Third New International Dictionary* (1965). "These definitions contemplate an opportunity to present before a tribunal evidence and argument." *CVS*, slip op at 2. "The plain statutory language" of MCL 211.34c(6), however, provides that the STC's decision must be "based on the written petition and the written recommendations of the assessor and the [STC] staff." This is not a hearing as contemplated in the constitution. *CVS*, slip at 2-3.

Iron Mountain raises a novel argument not considered in the *CVS* opinion. It contends that the use of the verb "arbitrate" in MCL 211.34c(6) creates a right to a hearing. We are bound by this Court's published opinion to hold that no hearing is required under the statute. MCR 7.215(C)(2) ("A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. The filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals."). Even if we were not so bound, we would find Iron

Mountain's argument lacking. "Arbitrate" simply means "to decide [or act] as an arbitrator or arbiter." *Random House Webster's College Dictionary* (2nd ed 1997), p 68. An "arbitrator" is in turn defined as "[a] person empowered to decide a dispute or settle differences . . . ." *Id.* And the statute, MCL 211.34c(6), defines the scope of the arbitration: "The [STC] shall arbitrate the petition based on the written petition and the written recommendations of the assessor and the [STC] staff." . Accordingly, MCL 24.306 is inapplicable.

As the STC's review is not a "contested case," judicial review is limited to determining whether the decision was "authorized by law." This Court described that standard of review in *Natural Resources Defense Council*, 300 Mich App at 87-88:

> When the agency's governing statute does not require the agency to conduct a contested case hearing, the circuit court may not review the evidentiary support underlying the agency's determination. Judicial review is limited in scope to a determination whether the action of the agency was authorized by law. The agency's action was not authorized by law if it violated a statute or constitution, exceeded the agency's statutory authority or jurisdiction, materially prejudiced a party as the result of unlawful procedures, or was arbitrary and capricious. Courts review de novo questions of law, including whether an agency's action complied with a statute. [Quotation marks and citations omitted.]

Similarly, in *Northwestern Nat'l Cas Co v Commissioner of Insurance*, 231 Mich App 483, 488; 586 NW2d 563 (1998), this Court held:

> [I]n plain English, authorized by law means allowed, permitted, or empowered by law. Black's Law Dictionary (5th ed). Therefore, it seems clear that any agency's decision that is in violation of a statute or constitution, in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious, is a decision that is *not* authorized by law. . . . [Emphasis in original, quotation marks and citation omitted.]

The constitutional standard "focuses on the agency's power and authority to act rather than on the objective correctness of its decision." *Id.* at 489.

Iron Mountain raises several arguments with an eye toward establishing that the STC's decision was not authorized by law. Yet, the circuit court never considered those arguments in the correct light. Rather than address those issues at this time, we remand to the circuit court for consideration of whether the STC's decision was authorized by law.[4]

[4] In determining whether the STC's decision was authorized by law, Iron Mountain will likely request the circuit court to interpret the meaning of the term "warehouse" in MCL 211.34c(2)(d)(ii)'s definition of industrial real property. In this Court, Iron Mountain argued that its Livonia facilities were "warehouses" for client's records and therefore fall within the

We therefore vacate the circuit court's order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause

definition of industrial property. In *CVS*, however, this Court considered the plain and unambiguous language in this provision and concluded that (d)(*ii*) applies only to warehouses on "utility" sites. *CVS*, slip op at 5.